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Supreme Court, U.S.
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No. 00-01704

IN THE UNITED STATES SUPREME COURT
OCTOBER 2000 TERM

Rodney Earl Cohen — Petitioner
VS.
Don Grant, et al. — Respondents

Petiton For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

Reply Brief

Rodney Earl Cohen,
Petitioner

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New Points Raised

Questions Presented

I.

Whether Cohen should be held to the same standards of trained counsel wherein he failed to file an additional ***Certificate of Appealibility*** after this Honorable Court vacated the judgment in the instant case and remanded to the Fifth Circuit in light of ***Artuz V. Bennett***

Table of Authorities

Cases

Artuz V. Bennett, 531 U.S.–, 121 S.CT. 361(2000).....1, 3
Bounds V. Smith, 430 U.S. 817.....2
Haines V. Kenner, 404 U.S. 519 (1972).....2
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United States ex rel. Williams V. Twomey, 510 F.2d. 634, 640 (CA7), Cert. denied, 423 U.S. 876, 46 L.Ed. 2d 109, 96 S.Ct. 148 (1975).....3

Argument

I. Petitioner's postion is that he should not be held accountable for failing to file an additional application for a *Certificate of Appealability* after this court granted *Certiorari* and vacated the judgment and remanded in light of *Artuz V. Bennett, 531 U.S. –(2000).* Wherein this Petitioner received no notice of same from the Fifth Circuit.

On November 13, 2000, this Court vacated the judgment of the United States Court of Appeals for the Fifth Circuit and remanded the case to that court for further consideration in light of ***Artuz V. Bennett, 531 U.S.—, (2000).*** While said case was pending before the Fifth Circuit, Cohen was unaware that he was required to file a new and additional Application for a COA, as it was his understanding that his first and only Application stood as submitted.

Cohen would further state to the Court that while the case was pending, he did not receive any process and/or notice from the Fifth Circuit that in fact he was allowed to file anew, wherein it would have been very beneficial and in his best interest to do so. As a matter of fact, this Petitioner has been and still is most eager to pursue this instant case and has further

attempted to navigate through these complex proceedings following strictly by the rules and other applicable laws, in his present pro se capacity.

The record in the instant case clearly supports Cohen's contention that he has been prudent in the preparation and prosecution of his appeal process.

Legal Analysis

It is well settled that an accused has a right to effective assistance of counsel, although this right only extends through trial and terminates at the conclusion of the direct appeal process. ***See generally Strickland V. Washington, 466 U.S. 668 (U.S. 1984)*** After the conclusion of the direct appeal process within the highest court of any individual state, counsel is no longer obligated to pursue any further remedies of a convicted defendant seeking redress from an unlawful conviction and sentence. Therefore, it is the burden of the incarcerated defendant to secure alternate counsel, and if unsuccessful, his only recourse is to proceed in a pro se capacity, in which proceeding in such capacity is also a right which is guaranteed to an incarcerated litigant seeking relief from an unlawful conviction and sentence. ***Bounds V. Smith, 430 U.S. 817.*** This Honorable Court has further determined that pleadings filed by prisoners who are proceeding pro se should be liberally construed and that a limited amount of leeway will be allowed thereof. ***See Haines V. Kenner, 404 U.S. 519 (1972) and Faretta V. California, 95 S.Ct. 2525 (1975).*** It is clear from the General Docket listed as **Appendix C** to the Respondents ***Brief in Opposition*** that no order was filed and/or any other notice directing Cohen to file a new application for a ***Certificate of Appealability***. As far as known and understood by petitioner, his case was to be reviewed by the Fifth Circuit Court of Appeals to determine if ***Artuz V. Bennett*** was applicable thereto. Hence the reason that Cohen remained silent in regards to filing an additional application for a COA.

Furthermore, Cohen would state to this Honorable Court that it is his position that he could adequately avercome the two-pronged hurdle as set out in this court's ruling in ***Slack V. McDaniel, 529 U.S. 473 (2000)*** and had been aware that he was allowed to plead anew, his pleadings would

have conformed to such in order to demonstrate that his initial petition states valid claims therein, which jurists of reason would in fact find it debatable whether he was denied constitutional rights, in addition to whether the district court was correct in its procedural ruling. Finally, Cohen would ask that this Honorable Court take judicial notice of the fact that he is an incarcerated litigant with limited knowledge as well as limited access to appellate jurisprudence, wherein Respondents are trained and licensed attorneys with unlimited access to a full aresenal of legal tools and weapons within their reach and at their disposal. As Judge Wyzanski was quoted in this Honorable Courts ruling in ***United States V. Cronic, 80 L.Ed. 2d 657, 666-667 (1984).*** "While a criminal trial is not a game in which the participants are expected to enter the ring with a near match in skills, neither is it a sacrifice of unarmed prisoners to gladiators." ***United States ex rel. Williams V. Twomey, 510 F. 2D 634, 640 (CA7), cert. denied, 423 U.S. 876, 46 L. Ed. 2d 109, 96 S. Ct. 148 (1975).***

Petitioner's position is that the same could be said of and dealing with the appellate process, and from all indications Cohen is of the opinion he is the unarmed prisoner pited against the State of Mississippi being the gladiators with swords drawn. Considering the facts as set out herein, if this Honorable Court deems it just and appropriate, Cohen would have no objections to filing any pleading to further demonstrate that he can show both prongs of the ***Slack v. McDaniel*** test.

CONCLUSION

Petitioners position is that he has properly demonstrated that his failure to file anew regarding his application for a ***Certificate of Appelability*** while this case was pending in the Firth Circuit on remand was through no fault of his own. Petitioner would further contend that after scouring through all legal resources available to him, he is still unable to find any rule or directive instructing that he was allowed and/or required to file same. Finally, there can be little doubt that Cohen has vigorously attempted to seek relief from his unlawful conviction and sentence throughout his pleadings. Therefore Petitioner respectfully asks this Honorable Court to take judicial notice and consideration of that fact, and if he was in error for

failing to submit a new application for a COA while this instant case was on remand to the Fifth Circuit for further consideration in light of ***Artuz***, then construe it as harmless.

Respectfully Submitted,

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Certificate of Service

This is to certify that I, Rodney Earl Cohen, Pro Se petitioner herein, have caused to be mailed via United States Postal Service, first-class postage prepaid, a true and correct copy of the foregoing ***Reply Brief*** to the following:

Jo Anne M. McLeod
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This, the 7th day of September, 2001

Rodney Earl Cohen
Rodney Earl Cohen